

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:
DR. VEENA J. ALFRED AND
ALFREDHOUSE ELDERCARE, INC.
Petitioner

Dr. Veena Alfred
Patrick La Vay
Victoria Bryant
Carl F. Starkey

For the Petition
Anne Marie Vasallo, Esquire
David D. Frieshtat, Esquire
Attorneys for Petitioner

Before: Lynn A. Robeson, Hearing Examiner

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Board of Appeals Case No. S-2815
OZAH Case No. 12-03

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Zoning Ordinance, to build and operate a “domiciliary care home” for up to 34 beds on property located at 6020 Needwood Road, Derwood, Maryland. The property consists of approximately 2.5 acres within the RE-1 Zone. Filed on June 6, 2011, Petition No. 2815 seeks a special exception pursuant to §59-G-2.37 of the

Originally scheduled for a public hearing on October 14, 2011, the hearing was postponed twice at the request of the applicant. Exhibits 18, 20. This office issued notice of both postponements, and ultimately scheduled the public hearing for January 27, 2012. Exhibits 19, 22. The Petitioner filed amendments to the petition on December 6, 2011, and at the public hearing on January 27, 2012. Final site plans and landscape plans, incorporating all amendments, were submitted on January 27, 2012.

Technical Staff, in a memorandum dated January 6, 2012, recommended approval of the petition, subject to specified conditions (Exhibit 39). On January 19, 2012, the Planning Board voted unanimously to recommend approval of the special exception, with modified conditions. Exhibit 28. There is no opposition to the petition.

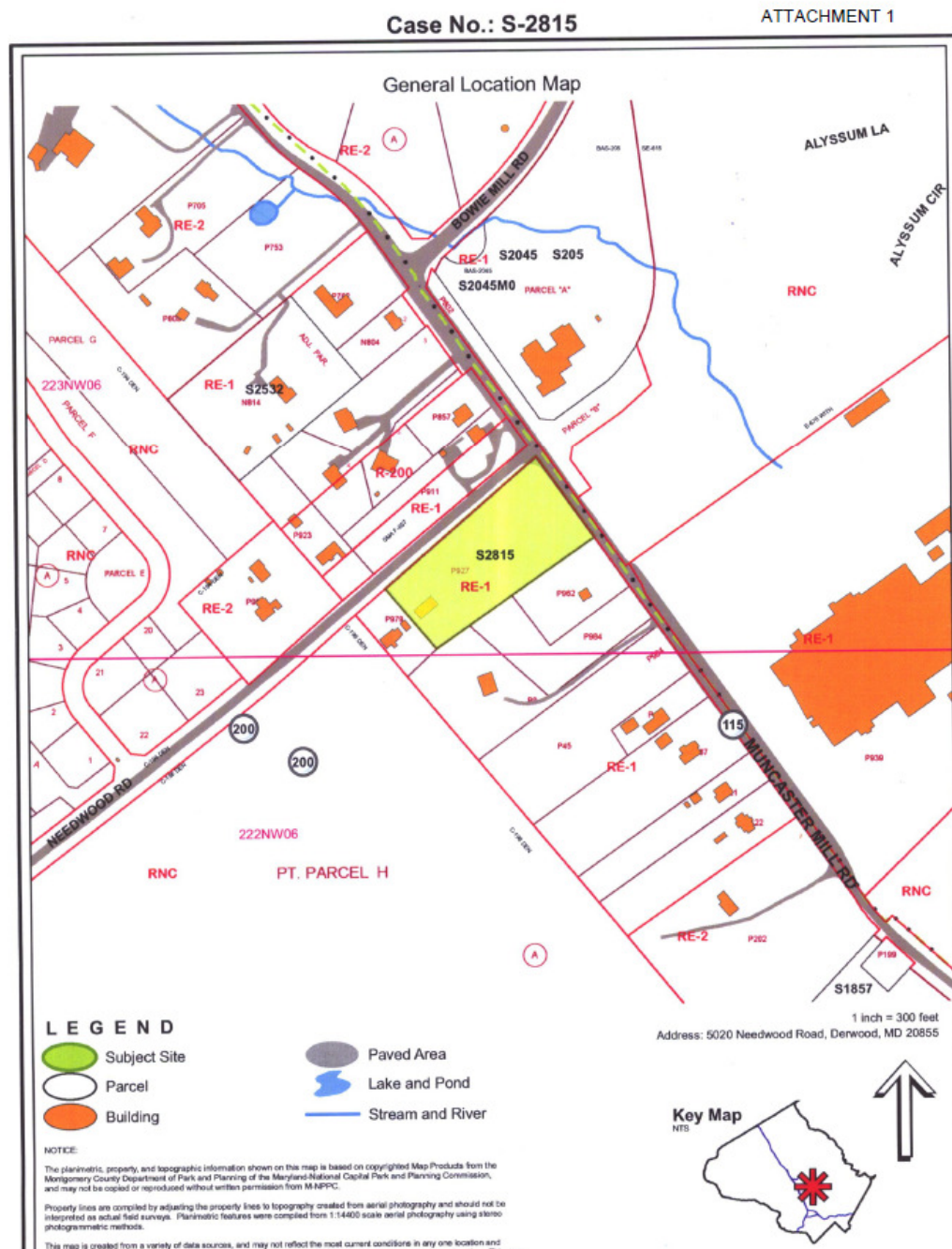
The record was held open until February 13, 2012, for this office to issue a notice of Petitioner’s request to amend the petition (Exhibit 43) and to (1) receive objections to the request to amend the petition and (2) comments on the revised plans. No additional objections or comments were received and the record closed on February 13, 2012.

For the reasons that follow, the Hearing Examiner recommends that the petition be approved subject to conditions.

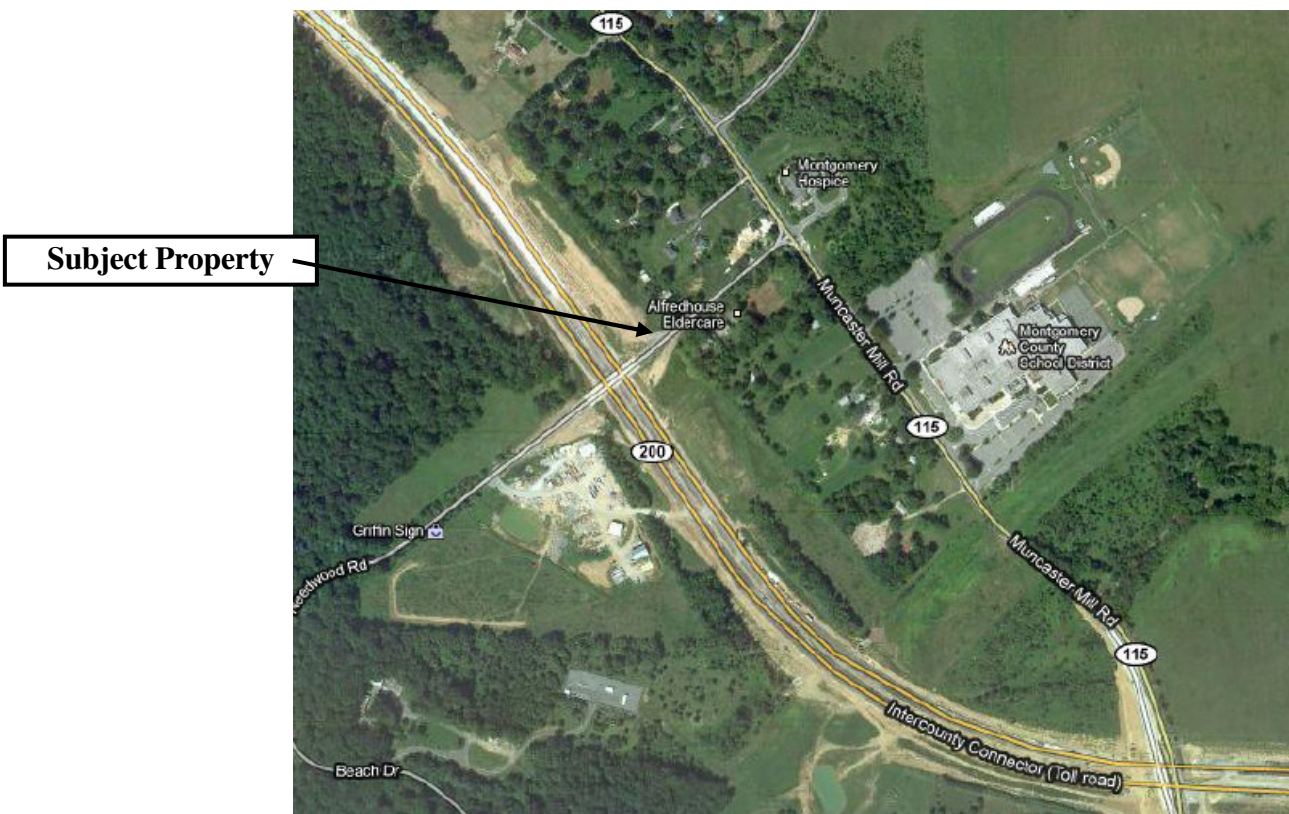
II. FACTUAL BACKGROUND

A. The Subject Property

The subject property consists of approximately 2.5 acres located in the southwest quadrant of the intersection of Muncaster Mill Road and Needwood Road. A map showing the location of the property is included in the Technical Staff Report (Exhibit 39, Attachment 1):



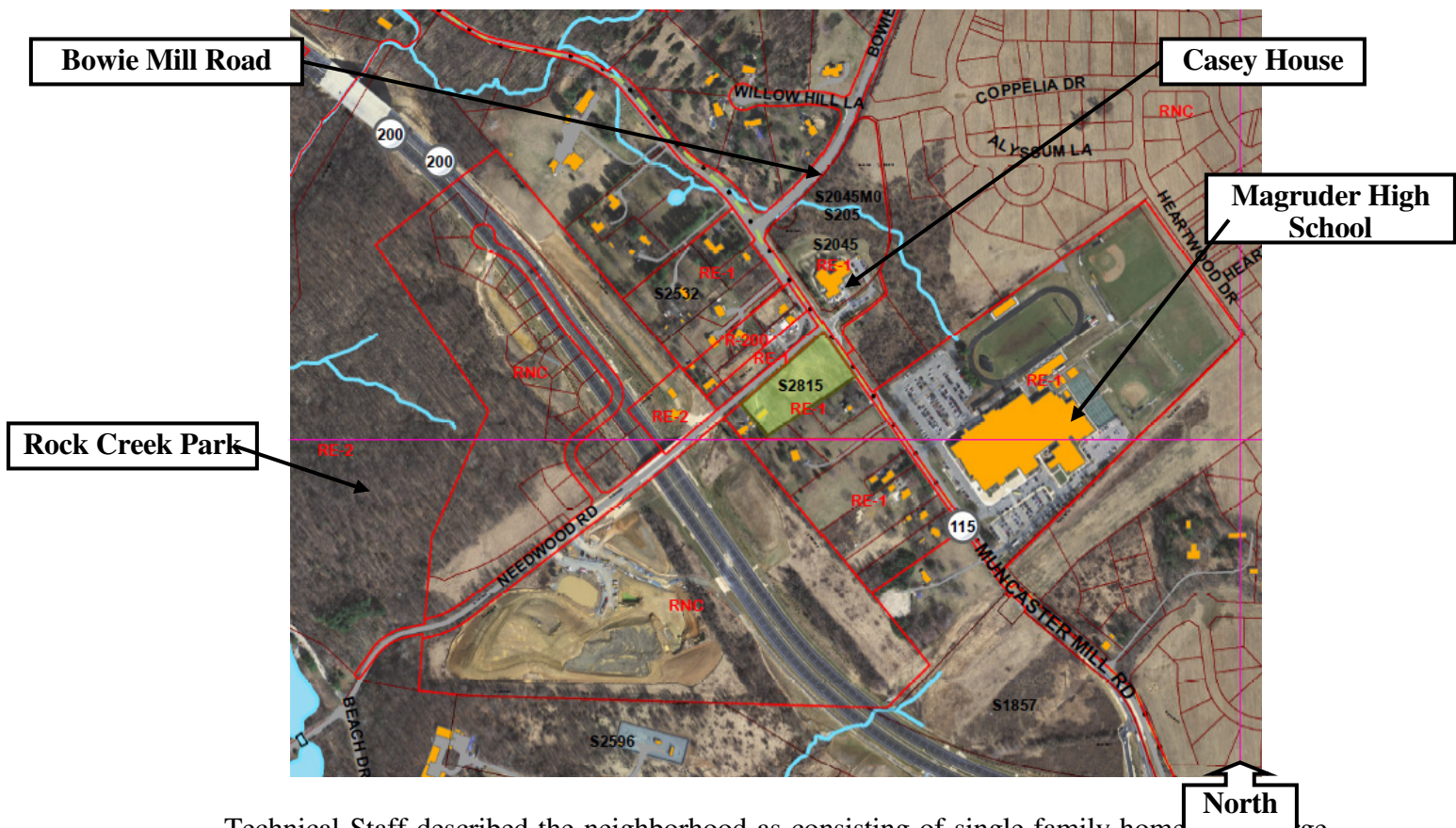
The property is currently improved with a small group home for five elderly persons and two non-resident staff, which Technical Staff advises is a use permitted by right in the RE-1 Zone. Two non-resident staff persons provide care for the residents of the group home. The group home is housed in a one-story ranch-style dwelling that contains seven bedrooms, three bathrooms, a living room, a dining room, a kitchen, a laundry room and a driveway area for parking and deliveries. Technical Staff advises that the property has approximately 435 feet of frontage along Needwood Road and approximately 200 feet of frontage along Muncaster Mill Road. Access to the existing group home is from Needwood Road. Exhibit 39, p. 2. An aerial photograph of the subject property submitted by the Petitioner (Exhibit 16(b)) is shown below:



Technical Staff advises that the site is generally flat with mature trees within the interior of the site as well as along its southern, western, and eastern boundaries. Exhibit 39, p. 2. According to Staff, the site is not located in a Special Protection Area and is approved for both W-1 and S-1 water and sewer categories. Exhibit 39.

B. The Neighborhood and its Character

Technical Staff determined that the surrounding area for the purpose of determining compatibility of the proposed use was bounded by Muncaster Mill Road to the north, Bowie Mill Road to the east, and Rock Creek Regional Park to the south and west. There is a single-family home across the street and the Intercounty Connector lies to the west of the property. The Montgomery Hospice at Casey House is located on Muncaster Mill Road, diagonal to the northeast and Magruder High School lies diagonal to the southeast of the property. Exhibit 39, p. 3. The confines of Technical Staff's delineation of the neighborhood is shown on Attachment 2 to the Technical Staff Report (Exhibit 39):



Technical Staff described the neighborhood as consisting of single-family homes with large lots as well as some institutional uses to the northeast and southwest. Exhibit 39.

The Petitioner's land planner, Ms. Victoria Bryant, disagreed with the boundaries of the neighborhood delineated by Technical Staff. Staff stated that Bowie Mill Road is the eastern

boundary; actually, Bowie Mill Road is to the west of the subject property. She defines the surrounding area as Muncaster Mill to the north and east (where it intersects with the ICC) and the ICC to the south and southwest of the property, and then Rock Creek Park to the northwest. T. 38. She did not, however, disagree with Staff's characterization of the surrounding area. The Hearing Examiner agrees with Ms. Bryant that the boundaries of the surrounding area are those described by Ms. Bryant. She also finds, as did Technical Staff, that the surrounding area is characterized by single-family homes on larger lots; with institutional uses north and southeast of the subject property.

C. Proposed Use

1. Petitioner's Concept

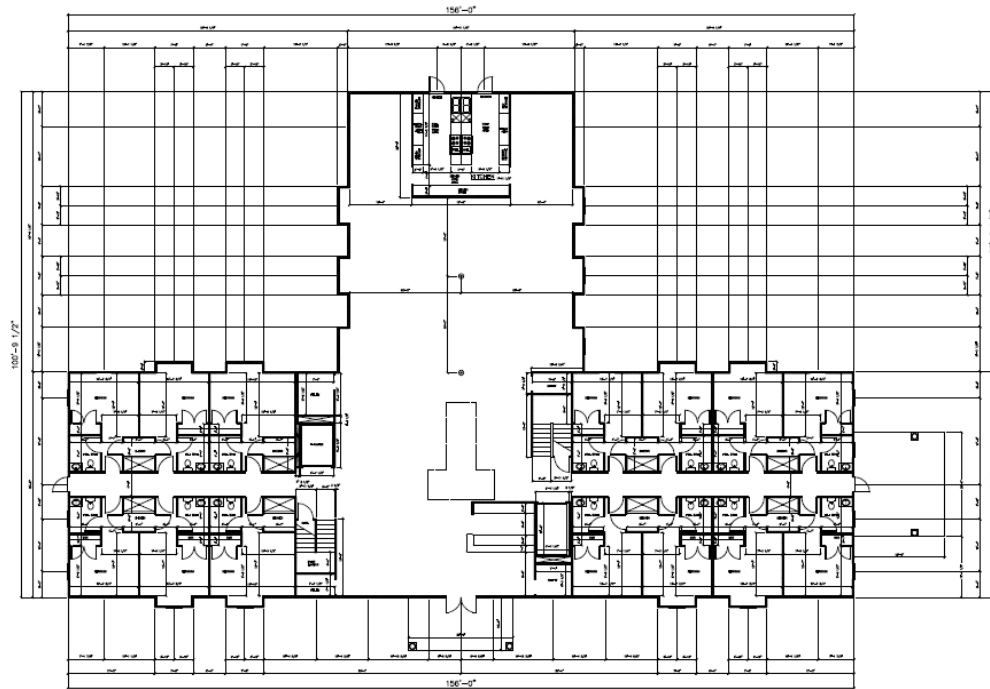
Petitioner proposes to construct a 34-bed domiciliary care facility east of the existing group home on the property. According to Dr. Veena Alfred, Petitioner, the facility will provide assistance to residents in basic daily activities, such as bathing, cooking, and making sure that medications are taken. The facility does not provide Alzheimer's care, but does provide daily support for frail and elderly residents. T. 7. They will also provide additional services, such as laundry and housekeeping services, transportation to shopping, and other care. T. 8. The facility differs from a nursing home because it does not offer nursing care. T. 11. Dr. Alfred plans to continue the group home use on the property. The Hearing Examiner requested that the Department of Permitting Services (DPS) confirm that two principle uses were authorized by the Zoning Ordinance. Mr. David Niblock replied in the affirmative on behalf of DPS. Exhibit 27.

The building will consist of approximately 21,576 square feet in two stories. According to the Petitioner's architect, Mr. William Stablein, the proposal uses architectural details and materials to create residential character and scale. T. 67-68. The walls will be faced either with a board-on-board type of siding or stucco material. The sloping roof will have asphalt shingles, and possibly may have some standing seams for accent. The building is two-stories and includes some dormer

appendages on the roof to break the scale of the facility. T. 67. Elevations of the building (Exhibits 4(f) and (g)), submitted by the Petitioner, are shown below:

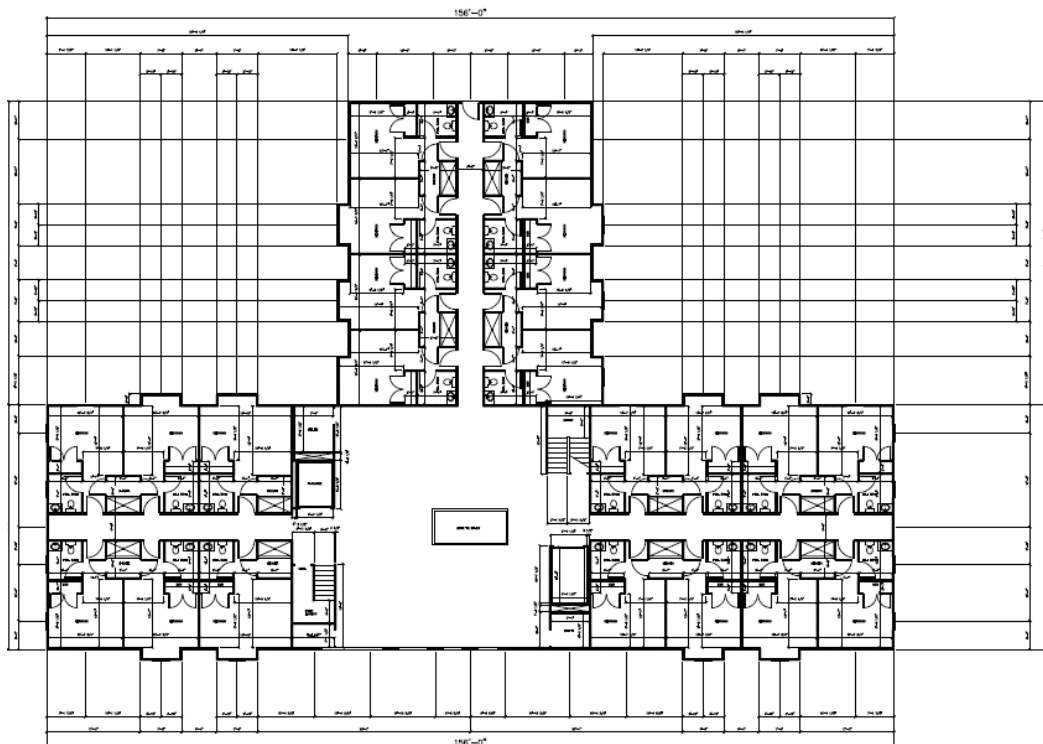


The proposed facility will include bedrooms, bathrooms, a kitchen, dining room common area and administrative areas for staff, which will provide 24-hour care. Exhibit 39, p. 3. Floor plans submitted by the Petitioner (Exhibits 4(h) and (i)) are shown on the next page.



Floor Plan for First Floor

1ST FLOOR LEVEL



Floor Plan, Second Floor

2ND FLOOR LEVEL

Technical Staff recommended approval of the petition subject to the following six (6) conditions (Exhibit 39, p. 2):

1. All evidence, testimony and exhibits of record are binding on the petitioner;

2. The maximum allowable number of residents (beds) must not exceed thirty-nine (39) beds (34 in the new facility and 5 in the existing group home facility);
3. The maximum number of employees on-site at any one time must not exceed twelve (12), including the existing group home;
4. Except in emergencies, deliveries of food and medical supplies are limited to Monday through Friday, 8:30 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 4:00 p.m., and trash pick-up is limited Monday through Friday, 9:00 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 4:00 p.m.;
5. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code;
6. Prior to Preliminary Plan approval, the roadway improvements along Needwood Road including construction of a shared use path must be determined.

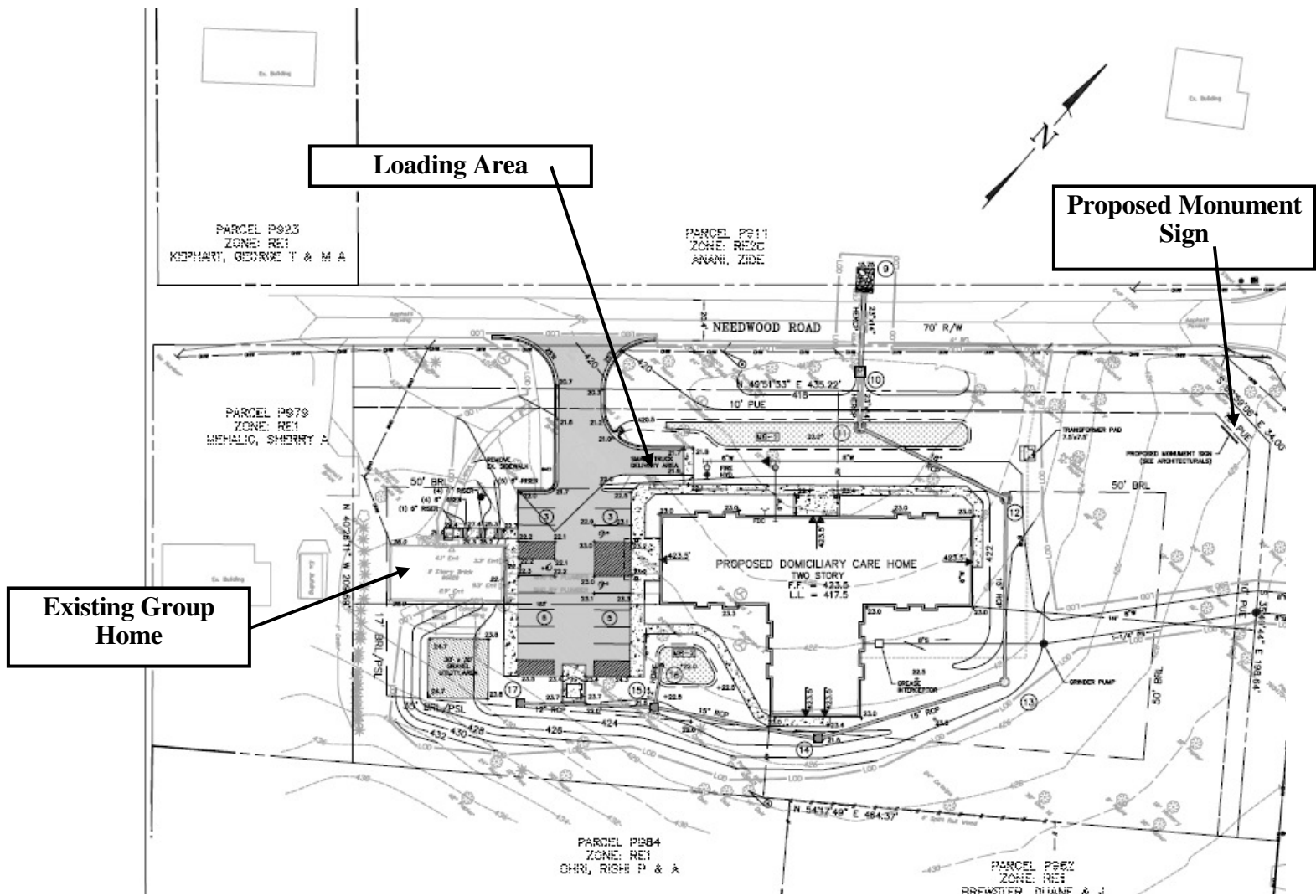
The Planning Board agreed with Technical Staff, but modified Condition No. 6 (discussed in Section II.C. of this Report) to read as follows:

Prior to Preliminary Plan approval, the roadway improvements along Needwood Road including construction of a shared use path must be determined. A shared use path on the site along Needwood Road may be added at the time of Preliminary Plan.

The Planning Board also indicated that the site plan included an emergency generator located on a gravel utility pad to the rear of the building. Noting that the generator would be located approximately 80 feet from the existing single-family home on that side, the Planning Board recommended that, “Hearing Examiner explore a condition that would reduce any noise-related impacts that may evolve as a result of the proposed generator.” Exhibit 28.

2. The Site Plan

The revised Site Plan (Exhibit 42(a)) is reproduced on the next page. The existing group home is setback approximately 79.5 feet from Needwood Road and approximately 18.9 feet from the adjoining property line to the west. The new building will be built near the center of the property and will be setback approximately 51.5 feet from Needwood Road and 142 feet from Muncaster Mill Road. Exhibit 39, p. 3. The setback from the rear (southeast) property line is 40.5 feet.

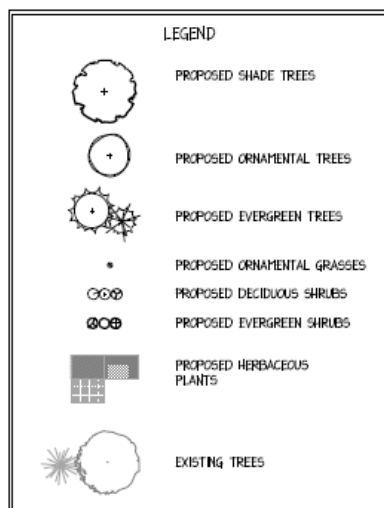


The Petitioner's land planner, Ms. Victoria Bryant, described the amendments to the original petition. She testified that Staff wanted to reduce the amount of impervious area and the number of trees impacted in the original design. Staff recommended moving the proposed building closer to the existing group home to accomplish this. In addition, Ms. Bryant stated that the loading area was originally at the southeast corner of the building, accessed by a loop road that began in front of the building and went around the side to the back. They moved the loading area to its current location to reduce the amount of impact it would have. T. 54. Technical Staff confirms that it "worked with the applicant to minimize vehicular surface areas and to consolidate parking between the existing house and the proposed building." Exhibit 39, p. 3.

Mr. Stablein testified regarding the generator to be located in the rear of the building. He stated that the generator is required as a back-up for life safety systems and possibly refrigeration. In his opinion, based on the size of the building, the generator will be small. In addition, it is possible to order a generator with a critical load silencer which reduces the sound produced by the exhaust as well as enclosures for the unit. The enclosures are removable (to service the unit), and therefore are not affixed to the ground. In Mr. Stablein's opinion, if the Petitioner selects a generator which comes with an enclosure and critical load silencer, combined with the smaller size, the 65-decibel noise limit will be met. T. 69-71.

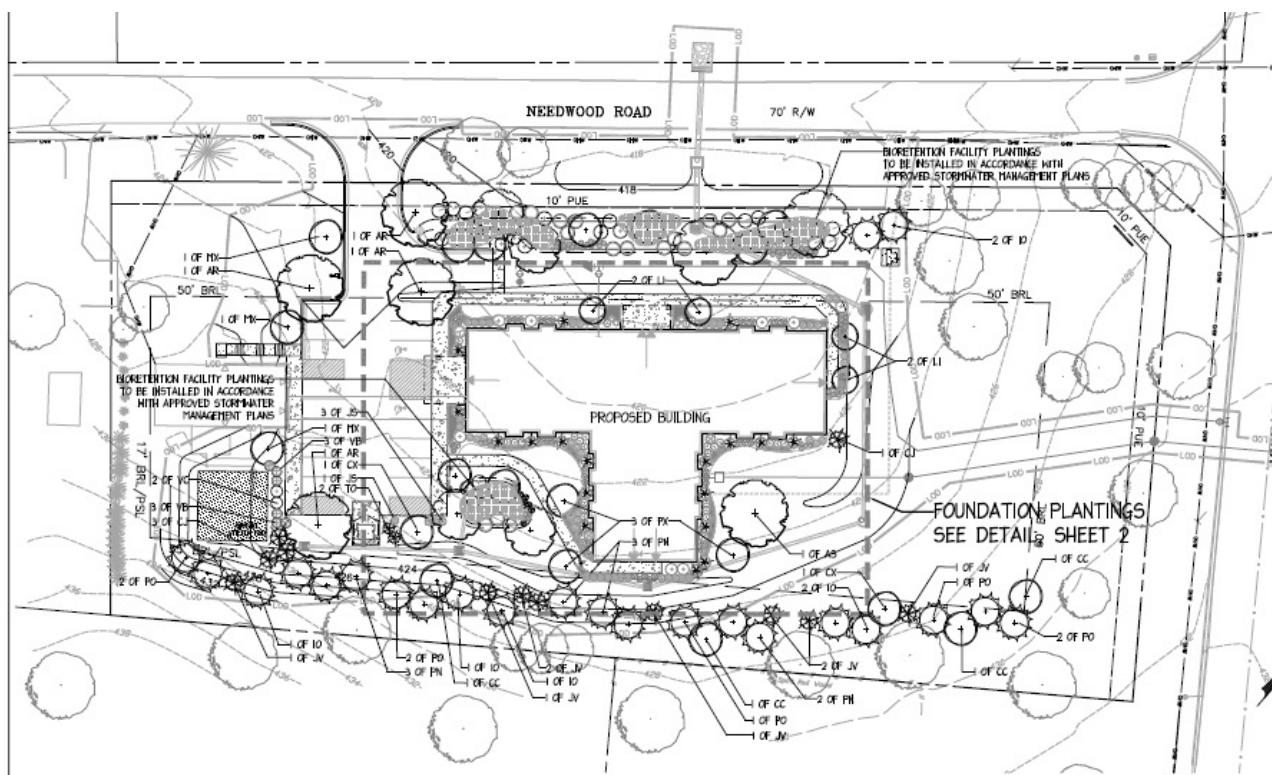
3. Landscaping and Lighting

Portions of the Landscaping Plan (Exhibit 49(b)) are reproduced below and on the following pages. Ms. Bryant, testified that the plan attempts to preserve as many of the existing trees as possible, and there will be a bio-retention facility which will be intensely planted. To the east, along Muncaster Mill Road, they have moved the building back from its original proposed location in order to save more existing trees. According to Ms. Bryant, the Petitioner will install a line of evergreen and deciduous trees along the southern property line to provide additional buffering there. T. 58.



LANDSCAPE PLANT LIST

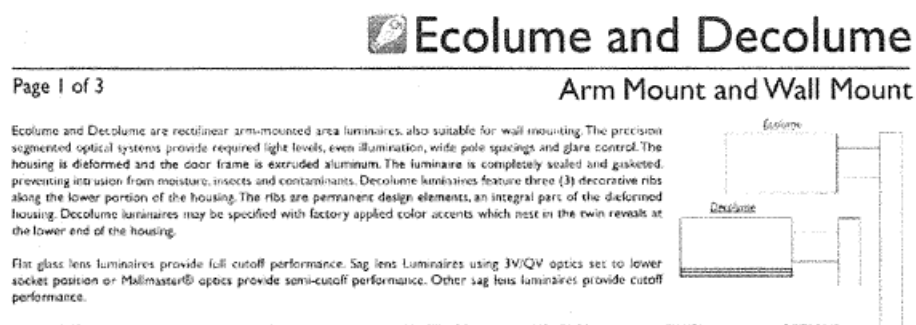
KEY	QTY	BOTANICAL NAME	COMMON NAME	CAL	HGT	SPD	ROOT	SPACING
SHADE TREES								
AR	4	Acer rubrum 'October Glory'	October Glory Red Maple	2 1/2'-5"			B4B	
AS	1	Acer saccharum 'Green Mountain'	Green Mountain Sugar Maple	2 1/2'-5"			B4B	
EVERGREEN TREES								
CJ	4	Cryptomeria japonica 'Yoshino'	Yoshino Cryptomeria	0.5" min.	8-6'		B4B	
IL	10	Ilex x 'Liberty'	Liberty Red Holly	0.5" min.	4-8'		B4B	
JO	7	Ilex opaca 'Jersey Princess'	Jersey Princess American Holly	0.5" min.	8-6'		B4B	
JV	8	Juniperus virginiana 'Concolor'	Emerald Sentinel Eastern Redcedar	0.5" min.	8-6'		B4B	
PN	8	Pinus nigra	Austrian Pine	0.75" min.	7-8'		B4B	
PO	8	Picea orientalis	Oriental Spruce	0.75" min.	7-8'		B4B	
TO	10	Thuja occidentalis 'Emerald'	Emerald Arborvitae	0.5" min.	8-6'		Cont.	
ORNAMENTAL TREES								
CC	4	Cercis canadensis	Eastern Redbud	0.75" min.	7-8'		B4B	
CK	2	Cornus x 'Constellation'	Constellation Dogwood	0.75" min.	7-8'		B4B	
LI	4	Lagerstroemia indica 'Tuskegee'	Tuskegee Crepe Myrtle	0.5" min.	8-6'		B4B	
MX	3	Malus 'Professor Sprenger'	Professor Sprenger Flowering Crab	0.75" min.	7-8'		B4B	
PK	3	Prunus x incana 'Okame'	Okame Cherry	0.75" min.	7-8'		B4B	
DECIDUOUS SHRUBS								
CA	16	Clethra alnifolia 'Hummingbird'	Summersweet		24-30"		Cont.	36" o.o.
FG	20	Fothergilla gardenii	Dwarf Fothergilla		18-24"		Cont.	30" o.o.
RX	28	Rosa x 'Scarlet'	Scarlet Flower Carpet Rose		18-18"		Cont.	30" o.o.
SN	11	Spiraea nipponica 'Snowmound'	Snowmound Spiraea		24-30"		Cont.	36" o.o.
VC	10	Viburnum cerasiifolium	Koreanopice Viburnum		30-36"		Cont.	60" o.o.
EVERGREEN SHRUBS								
AZ	4	Azalea doctordii 'Gumpo Pink'	Gumpo Pink Azalea			18-24"	Cont.	30" o.o.
CO	1	Chamaecyparis obtusa 'Gracilis Compacta'	Compact Minori Falsecypress		36-42"		B4B	--
IC	26	Ilex crenata 'Green Lustre'	Green Lustre Japanese Holly		18-24"		Cont.	36" o.o.
JS	24	Juniperus chinensis 'Sargentii'	Sargent Juniper			18-24"	Cont.	36" o.o.
RN	2	Rhododendron ostawianense 'Nova Zembla'	Nova Zembla Rhododendron		30-36"		Cont.	--
VB	7	Viburnum x burkwoodii 'Conoy'	Conoy Viburnum		24-30"		Cont.	48" o.o.
ORNAMENTAL GRASSES , GROUNDCOVERS & HERBACEOUS PERENNIALS								
CK	20	Calamagrostis x scutellaria 'Karl Foerster'	Feather Reed Grass				#2 Cont.	24" o.o.
HC	30	Hypnum x aspidotrichum	St. Johns Wort				#2 Cont.	24" o.o.
LM	225	Linum catharticum 'Big Blue'	Big Blue Lilyturf				4" Pots	12" o.o.

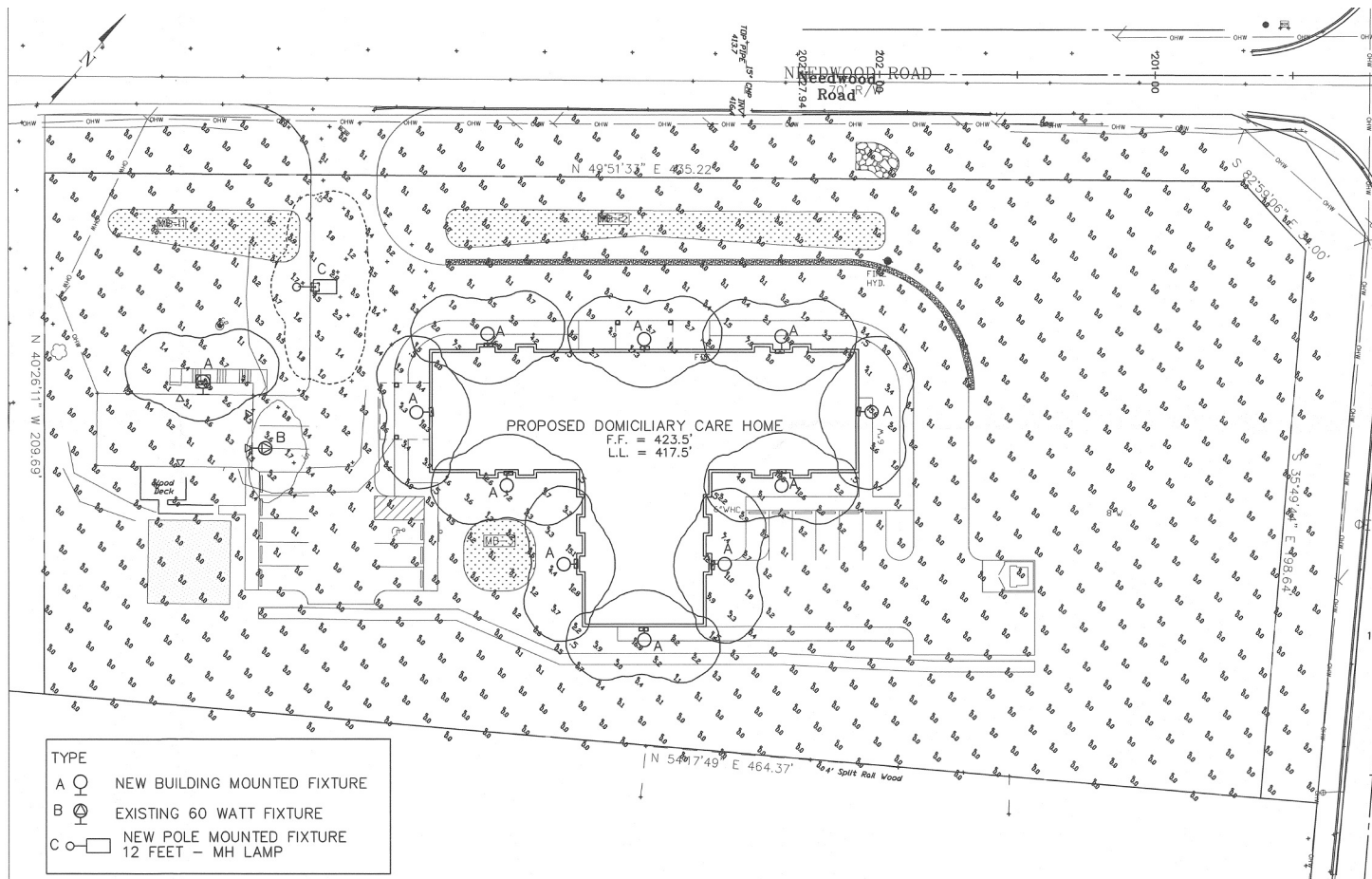


Ms. Bryant also described the reason for the changes to the landscape plan submitted at the public hearing. She stated that Section 59-E-2.83(d) of the Zoning Ordinance requires that 30% of the paved area be shaded within 15 years. They propose to replace several trees shown on the previous plan, including two Valley Forge elms, two Green Mountain sugar maples, and one scarlet oak, with October glory red maples because they tend to spread out more than the trees originally selected better to ensure this requirement may be met. T. 59.

Technical Staff found that the landscaping proposed achieves several objectives, and is thus adequate. Staff found that it provided screening and buffering along the southeastern property line and that the foundation plantings along the perimeter of the property add “scale and interest” to the building. Exhibit 39, p. 3. Landscaping is also used for bio-retention purposes.

The lighting will consist of wall-mounted fixtures on the building with one pole-mounted light for the parking area. According to the Petitioner’s architect, all of the fixtures are cut-off fixtures to minimize dispersion and glare from the lights. A copy of the Lighting Plan and Photometric Study and a detail of the pole-mounted light fixture submitted by the Petitioner (Exhibits 4(a) and (b)) are shown below:

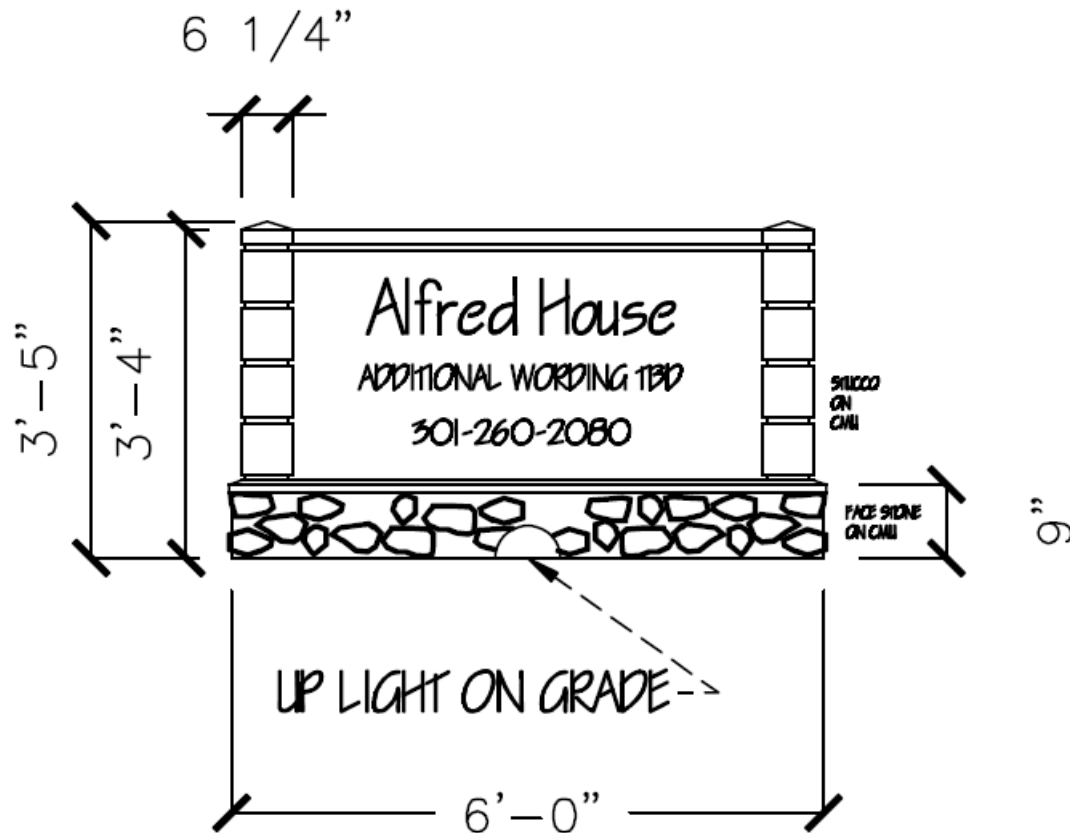




Mr. Stablein testified that the photometric analysis shows that there will be less than the 0.1 foot candle required, thus there will be no discernable light at the property line. T. 68-69. Technical Staff found that the lighting would not cause “glare or reflection into abutting properties.” Exhibit 39, p. 8.

4. Signage

Petitioner proposes to place a monument sign at the northeastern corner of the property. Measuring approximately 3 feet, 5 inches by 6 feet, Mr. Stablein testified that the sign is larger than permitted by the Zoning Ordinance, and will require a variance from those provisions. He opined that the size of the sign was not excessive on the site, and that the sign will be constructed out of the same materials proposed for the building exterior in order tie the architecture of the building and the site together. Details of the sign are shown in a diagram submitted by the Petitioner (Exhibit12) below:



Nothing in the record of this case indicates the extent to which a variance from §59-F-4.2 of the Zoning Ordinance (governing the size and setbacks of residential signs) is necessary. The size of the sign obviously exceeds the two square feet ordinarily allowed in a residential area pursuant to Zoning Ordinance §59-F-4.2(a)(1).

Regardless of the extent to which a variance will be needed, the Board of Appeals must first decide whether it would be compatible with the area. The only evidence on this point indicates that it would satisfy this standard. Mr. Stablein testified that the sign's size would not be excessive in relation to the site and the architecture would mirror that of the building.

Based on this evidence and the fact that Technical Staff found the sign to be of an appropriate size, the Hearing Examiner finds that the proposed sign would be compatible with the area. The following condition is recommended in Part V of this report:

A sign permit must be obtained for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is constructed. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform to all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.

5. Operations

Dr. Alfred testified that, because the facility is residential, it will operate 24 hours a day, 7 days a week. Approximately 10 employees through various shifts will staff the facility, but will not reside there. Staffing is determined by a staff to patient ratio of approximately one caregiver to four residents. At night, there will be two employees; there will be more during the day. Shifts are generally 7:30 a.m. to 7:30 p.m., barring emergencies. T. 9. Dr. Alfred testified that the existing group home is licensed for five residents and is fully occupied at present. Two non-resident staff members work different shifts. The existing group home will continue to operate if the special exception for the domiciliary care home is approved. T. 8. Deliveries will be made on the front side of the facility, away from the neighboring residential uses to the rear. Deliveries will be limited to typical daytime work hours. T. 61.

Dr. Alfred also testified that residents generally do not drive and prefer most of their activities to be indoors. The facility will provide indoor activities like music, art, therapy, movies and exercises. T. 10.

6. Public Facilities and Parking

a. Public Facilities:

While the subject property will not be further divided into parcels, Technical Staff advises that it will be required to obtain preliminary plan approval under Chapter 50 of the Montgomery County Code because of the new construction on the site. Exhibit 27. Therefore, pursuant to Zoning Ordinance §59-G-1.21(a)(9)(A), the Planning Board and not the Board of Appeals will ultimately determine the adequacy of public facilities. However, this section also requires that “approval of a

preliminary plan of subdivision must be a condition of granting the special exception.” Such a condition is recommended in Part V of this report.

Nevertheless, the evidence introduced in this case supports the conclusion that the impact on public facilities will be compatible with the neighborhood and that Petitioner will be able to establish the adequacy of public facilities at subdivision. Petitioner’s expert in transportation planning, Carl F. Starkey, testified that the proposed use will generate 11 new peak hour trips. He used trip generation rates from four different uses to estimate the number of trips that would be generated by this use, including congregate care, assisted living, continuing cognitive care, and assisted living facilities. Three of those categories came from the Institute of Transportation Engineers and one came from trip guidelines put forth by the Maryland-National Capital Park and Planning Commission. Based on this analysis, the proposed facility will generate a maximum of 11 peak hour trips. Local Area Transportation Review (LATR) guidelines exempt projects generating fewer than 30 peak hour trips from LATR. T. 77. Mr. Starkey also opined that the existing group home generates 5 peak hour trips. Even if these trips were added to the 11 trips generated by the new use, the combined use would still be under the 30 trips necessary to trigger full LATR. T. 78.

While he was not required to perform a traffic count for the proposed use, Mr. Starkey testified that he did obtain traffic volume data from the Maryland State Highway Administration. A traffic count conducted in April, 2011, for the nearby intersection of Muncaster Mill Road and Needwood Road, shows that it currently operates at levels of service D during both the morning and evening peak hours. Even if all eleven trips were added to the peak hour volumes, the intersection would still operate at level of service D. T. 81.

Nor is the property subject to Policy Area Mobility Review (PAMR) due to its location in the Rural East Policy Area. There are no mitigation requirements for this policy area. Exhibit 10.

The property is within the geographic area covered by the *2004 Upper Rock Creek Area Master Plan*, which recommends a dual use (i.e., hiker/biker) path along Needwood Road as well as a bikeway

within the Needwood Road right of way. For several reasons, discussed in more detail in Section II.D of this Report (Master Plan), the Petitioner wishes to delay a final determination on providing a bike path on this site until preliminary plan approval.

In Mr. Starkey's opinion, site circulation is safe and adequate. No parking will be permitted on the three areas hatched out on the site plan to assist people circulating through the area. Even if all of the parking spaces were occupied, these areas will allow people to turn around. T. 78-79. The truck delivery is separated from the parking area. T. 79.

Finally, the evidence is that other public facilities will be available to this project. Petitioner's land planner, Victoria Bryant, testified that public facilities would be adequate. No school-age children are associated with the use, the Gaithersburg Fire Department is 1.8 miles away, and the Sandy Spring Fire Department is 4.9 miles away. The Montgomery County Police station is approximately 6 miles from the site, and there are recreational facilities at the high school, Redland Elementary School, and Rock Creek Park. T. 53. Both she and Mr. La Vay testified that the property is in an S-1 sewer category and W-1 water category.

b. Adequacy of Parking Provided:

The amount of parking required on site is established by Zoning Ordinance §59-G-2.37(d):

(d) Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.

There are a maximum of 34 beds proposed for the domiciliary care facility and 10 employees. Thus, a total of 14 parking spaces are required for the proposed use ($34/4 = 8.5$, $10/2 = 5$). The additional three parking spaces are required for the group home with five beds and two employees. Technical Staff found that the proposed parking spaces meet the requirements of the Zoning Ordinance. Exhibit 39, p. 11.

In sum, the undisputed evidence is that Petitioner will be providing an adequate number of parking spaces, set back, shaded and screened, as required by statute.

D. Master Plan

The subject property lies within the *2004 Rock Creek Master Plan*. The Plan does not specifically address this site, but does express its “key component” as the need to provide a variety of housing types in a variety of socio-economic strata. Exhibit 6(a), p. 35. Technical Staff concluded that the proposed use complies with the Plan because it achieves the housing goals of the Plan. In addition, Technical Staff found the development consistent because the Plan recommends RE-1 zoning for the property and the development implements that zoning. As a result, Staff concluded that the development did not conflict with the Plan’s goal for low-density use to preserve the sensitive natural and water resources in the Upper Rock Creek Watershed. Exhibit 39, p. 4.

The primary issue regarding the development’s compliance with the Plan is its recommendation for a dual use (i.e., hiker/biker) bike path in the right of way along Needwood Road between Redland and Muncaster Mill Roads. Exhibits 39, p. 4, Exhibit 28, *Plan*, Table 6. The Petitioner desires to defer a decision on providing the bike path to preliminary plan review for reasons discussed below. T. 45-47.¹

The Plan states the following goals for Class I bikeways in general (*Plan*, p. 75):

Bikeway System routes as described in this Master Plan should be implemented as well as a “finer” system of neighborhood routes. The neighborhood routes should be designated and built when new roads and neighborhoods are built. They should provide connections to the main bike routes as well as circulation within the neighborhoods and connections to local destinations such as nearby parks and schools.

¹ Petitioner submitted limited excerpts from the various master plans into the record of the case. Exhibit 6. Because the Hearing Examiner references portions of the plans not included in the excerpts submitted, the Hearing Examiner takes official notice of the *2004 Upper Rock Creek Master Plan*, the *2005 Countywide Bikeways Functional Master Plan*, and the *2008 Intercounty Connector Limited Functional Master Plan*. Should Petitioner’s object, they may file an objection during the 10-day period for requesting oral argument before the Board and the Hearing Examiner will re-open the record of the case.

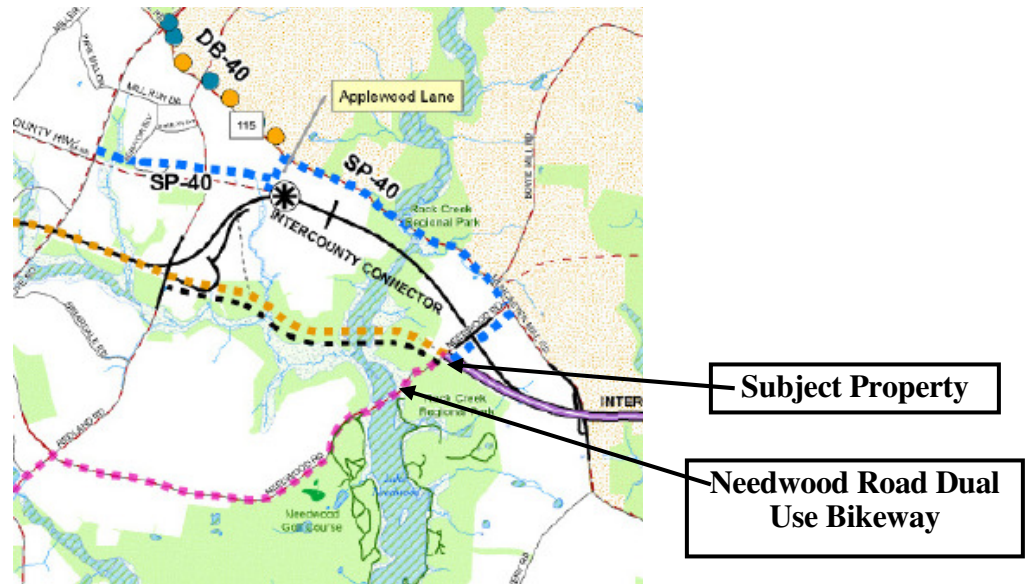
The Plan recommends that Class I bikeways should be included within the right-of-way for the Inter-County Connector (ICC). *Plan*, p. 75. With regard to the Class I bikeway recommended along Needwood Road, the Plan states:

On Needwood Road, a Class I bike path should be designated and constructed from Redland Road to Muncaster Mill Road to provide access to Rock Creek Park. The Park and Trails section of this Plan contains additional information on connecting bike paths between Rock Creek Park and the Intercounty Connector bike paths. A Class I bike path is included as part of improvements to MD 124. *Id.*

In 2005, the County adopted the *Countywide Bikeways Functional Master Plan* (Bikeways Plan). Designated pathway DB-14, the Bikeways Plan characterizes the Needwood Road dual-use bikeway as “part of important connection to the Shady Grove Metrorail Station.” *Bikeways Plan*, Table 2-2. According to Ms. Bryant, the Bikeways Plan recommends there be an on-road bikeway as well as the dual use off-road hiker/biker path. T. 38-42.

In 2008, the County adopted an amendment to the Bikeways Plan and the County’s *Master Plan of Highways*. This plan, the *Intercounty Connector Limited Functional Master Plan* (ICC Plan), addressed the treatment of bikeways and interchanges for the ICC. For a variety of reasons, the ICC Plan altered the alignment of the ICC as well as a dual use bikeway which was to have connected the Needwood Road bikeway to Muncaster Mill Road, part of the intended connection to the Shady Grove Metrorail Station. *ICC Plan*, p. ii. The ICC Plan included a map (*ICC Plan*, p. 14) outlining the area covered (shown on the next page).

According to Ms. Bryant, questions have arisen regarding the implementation of the recommendations in all of the plans. Right now, the master plans do not designate which side of the road the bike path will be on. It is also unclear whether the County will expand the roadway to accommodate the on-road bike path. In addition, the State was originally going to fund bike paths within the ICC right of way as well as the “fingers” from the ICC connecting to the County bike path system. The State now



indicates that it will fund only those portions of the bike path within the ICC right of way and will not fund connections to the system. T. 50-51. At present, Ms. Bryant does not know how the connections will be funded or implemented. T. 51.

The Petitioner desires to defer a decision regarding the alignment and location of the Plan's recommended bike path along the subject property's Needwood Road frontage. Ms. Bryant testified that the off-road bike path would be located within the right of way on the subject property and be approximately 22-24 feet from the center line of the road. Ms. Bryant advised that there currently is a large swath of grass and trees within the area where the bike path would go. Aside from the uncertainty regarding implementation of the bike path, Ms. Bryant testified that requiring the Petitioner to construct the bike path would necessitate removing several existing trees which currently screen the site. She suggested that the Hearing Examiner place a condition on the special exception that would (1) permit the Planning Board to determine the final alignment of the bike pathway at preliminary plan and (2) would avoid requiring the Petitioner to return to the Board to modify its special exception plan. T. 45-47. The latter is requested to avoid the cost associated with modifying the special exception plan. T. 45-47.

Technical Staff found that the petition was consistent with the Master Plan because Petitioner agreed to implement the pathway if required. Exhibit 39, p. 4. The Planning Board adopted Technical Staff's conclusion, also stating that the pathway could be added at the time of preliminary plan approval.

The Hearing Examiner agrees that the petition is consistent with the Master Plan for the reasons stated by Technical Staff and the Planning Board, but disagrees with the Petitioner that it need not return to the Board if required to construct the improvements. The Hearing Examiner is not aware of any legal basis for avoiding the Board of Appeals if the special exception plan is modified. If Petitioner is required to construct the path, the Board, in its discretion, may determine whether the amendment is so minor that it may be approved administratively. It is impossible to determine, without seeing the actual plan, whether or not that is the case at this stage of the process. As a result, the Hearing Examiner will include Staff's condition, rather than the Planning Board's, as a condition of approval in this case.

E. Environment

Technical Staff reports that the property was the subject of a forest conservation violation because 0.97 acres of forest were cleared. The approved Preliminary Forest Conservation Plan (Exhibit 23(c)) accounts for this clearing. Exhibit 39, p. 5. According to Staff, there are 22 large or specimen trees located on or adjacent to the property. The Petitioner proposes to remove 9 specimen trees and impact the critical root zones of 7 specimen trees. The removal of and impact to the roots of the specimen trees requires a variance from the requirements of the County's Forest Conservation Law. The variance is approved with the approval of a Preliminary Forest Conservation Plan (PFCP), which was considered as a separate Planning Board item. The Board did approve the PFCP and Petitioner will satisfy the planting requirement via an off-site forest mitigation bank. Exhibit 39, p. 5.

Petitioner also submitted a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) for the subject property as well. Technical Staff found that there are no streams, wetlands, 100-year

floodplain, stream buffers, highly erodible soils or steep slopes located on the property. The property is not located within a Special Protection Area or within the Patuxent River Primary Management Area. Exhibit 39, p. 6.

III. SUMMARY OF TESTIMONY

The Petitioner presented expert testimony from Ms. Victoria Bryant, who qualified as an expert in land planning and landscape architecture, Mr. Patrick La Vay, an expert in civil engineering, and Mr. William Stablein, an architect. Dr. Alfred testified as to the operations of the proposed use. Portions of their testimony are set forth herein where relevant. Their entire testimony is set forth in an appendix to this report, which is incorporated herein.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational

characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a domiciliary care home (*i.e.*, an assisted living facility). Characteristics of the proposed domiciliary care home that are consistent with the “necessarily associated” characteristics of domiciliary care homes will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with domiciliary care homes, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff described the physical and operational characteristics necessarily associated with a domiciliary care home as follows (Exhibit 39, p. 7):

- 1) buildings and structures, as well as outdoor passive areas for the residents and visitors;
- 2) lighting;
- 3) traffic to and from the site by staff, visitors and residents;
- 4) deliveries of supplies and trash pick-up;
- 5) parking areas to accommodate visitors and staff;
- 6) noise associated with the loading and unloading of food and equipment and garbage pick-up.

To this description, the Hearing Examiner would add that one would expect a domiciliary care home to produce some noise generated by equipment for the facility, such as the generator, and by occasional outdoor activities of residents and their families. The Hearing Examiner believes that these factors are inherent in all domiciliary care homes, by their nature, although their impact will vary significantly according to the nature of the domiciliary care home, its size and its location.

In the subject case, because the residents will be elderly and unlikely to drive, a relatively small amount of additional traffic will be generated, mostly by staff and visitors. Technical Staff found there would be no non-inherent impacts of the proposed use because the building's scale is designed in a manner that complements the surrounding residential characteristics, adequate parking is available for the residents, visitors, and employees, and there are sufficient buffers from existing trees and additional landscaping to adequately screen the use. Exhibit 39, p. 7. The Hearing Examiner agrees with Technical Staff that scale of the use here is not excessive and is well buffered visually by setbacks, landscaping and existing vegetation. The Hearing Examiner also finds that any noise impact from the generator will be mitigated by the critical load silencer and enclosure. As a result, she finds that there are no non-inherent impacts associated with this petition.

B. General Conditions

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the testimony and exhibits of the Petitioner provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: A domiciliary care home is a permissible special exception in the RE-1 Zone, pursuant to Code §59-C-1.31.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.37 for a domiciliary care home, as outlined in Part IV.C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject site lies within the geographic area covered by the 2004 Rock Creek Master Plan, which was discussed at length in Part II. D of this Report. Based on the evidence in this case, and having none to the contrary, the Hearing Examiner finds that the petition is consistent with the housing and environmental goals of the Plan as well as the recommended zoning. Two additional plans, the ICC Plan and the Bikeways Plan, contain recommendations for a proposed dual use bike path within the right of way along Needwood Road. Because the Petitioner has agreed to provide the bike path if required, the Hearing Examiner finds that the petition is consistent with these plans provided that implementation and alignment of the bike path are determined prior to preliminary plan approval, as recommended by both the Planning Board and Technical Staff. If required to construct the bike path, the Petitioner must request a modification of this special exception from the Board of Appeals. As conditioned, then, the

petition meets the requirement for consistency with all master plans as well as the separate requirements of the Zoning Ordinance.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Technical Staff concluded that the use will be in harmony with the general character of the neighborhood because “the scale and height of the new two-story building (26.7 feet maximum) will be constructed with minimal impact on the natural environment.” Exhibit 39, p. 8. The Hearing Examiner agrees and further finds that the significant setbacks, consolidation of parking between the group home and the proposed facility, and the landscape and buffering significantly mitigate any impacts from the use on the adjacent single-family homes. In addition, the relatively small number of peak hour trips generated by the facility will not have a significant impact on nearby roadways, as the level of service will remain unchanged.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: As discussed in Part II. of this report and in response to General Standard 4, above, there is no evidence that the use, as proposed, will be detrimental to the peaceful enjoyment of surrounding properties.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff concluded that the use will not have any objectionable adverse effects because the exterior lighting proposed will not cause glare or reflection into abutting properties, a conclusion supported by the Petitioner’s photometric study. In addition, the Petitioner’s architect

testified that because the generator required would be relatively small, the noise would remain below the County standard if a critical load silencer and an enclosure were required. The Hearing Examiner recommends that requiring these components to be included with the generator for the subject property will meet the criteria above.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff found only one other special exception, The Casey House (a hospice facility), in the surrounding area. Dr. Alfred testified that the proposed use complements the existing special exception, and the Casey House sometimes uses rooms in the existing group home for their patients. The remaining area is either institutional or large-lot residential use. The Hearing Examiner finds that this standard has been met.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. Rather, it will provide housing in the area for the elderly.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: The special exception sought in this case would require approval of a preliminary plan of subdivision. Therefore, the adequacy of public facilities will be determined by the Planning Board at subdivision, and approval of the preliminary plan of subdivision is a recommended condition in Part V

of this report, as required by this section of the Zoning Ordinance. Nevertheless, the evidence, which is discussed in Part II. C. 6. of this report, supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities. Whether or not a bike path will be required may be deferred to preliminary plan approval. If required, however, Petitioner must modify its special exception plan to show the bike path.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Conclusion: As discussed above, the adequacy of public facilities will be determined by the Planning Board at the time of subdivision review.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff found that “[t]he proposed use will have no substantial impact on the transportation system serving the property.” Exhibit 39, p. 10. It also found that site access and on-site circulation are adequate. This finding is supported by the testimony of Petitioner’s traffic engineer, Carl F. Starkey, as discussed in Part II. C. 6. of this report. There being no evidence to the contrary, the Hearing Examiner so finds.

C. Specific Standards

The testimony and the exhibits of record (including the Technical Staff Report, Exhibit 39) provide sufficient evidence that the specific standards required by Section 59-G-2.37 are satisfied in this case, as described below.

Sec. 59-G-2.37. Nursing home or domiciliary care home.

(a) A nursing home of any size, or a domiciliary care home for more than 16 residents (for 16 residents or less see “Domiciliary care home”) may be allowed if the board can find as prerequisites that:

(1) the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents;

Conclusion: This specific standard is essentially a summary of the general standards 4, 5 and 6, above.

For the reasons discussed therein, the Hearing Examiner finds that the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents.

(2) the use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood; and

Conclusion: Petitioner’s architect testified that architectural elements have been included, such as exterior materials, dormers and possibly seamed roofs, which are residential in nature. The exterior materials used on the building will be carried through to the sign, thus coordinating the architecture throughout the site. The building’s scale (approximately 27 feet high) is also residential in nature. Given this evidence, the Hearing Examiner finds that the proposed use will be architecturally compatible with other homes in the neighborhood.

(3) the use will be adequately protected from noise, air pollution, and other potential dangers to the residents.

Conclusion: As previously discussed, noise from the generators will be controlled on the site and the resident's activities and traffic are limited. The Hearing Examiner finds that this standard has been met.

(4) The Board of Appeals may approve separate living quarters, including a dwelling unit, for a resident staff member within a nursing home or domiciliary care home.

Conclusion: Not applicable. Petitioner proposes no resident staff employees.

(b) The following requirements must apply to a nursing home housing 5 patients or less:

* * *

Conclusion: Not applicable. The proposed facility will house more than 5 patients. The existing group home is a use permitted by right in the RE-1 Zone.

(c) The following requirements apply to all new nursing homes, additions to existing nursing homes where the total number of residents is 6 or more, and to all domiciliary care homes for more than 16 residents.

(1) The minimum lot area in the rural zone must be 5 acres or 2,000 square feet per bed, whichever is greater.

Conclusion: Not applicable. Subsection (1) applies only to rural zones.

(2) In all other zones, the minimum lot area must be 2 acres or the following, whichever is greater:

a. In the RE-2, RE-2C, RE-1 and R-200 zones, 1,200 square feet for each bed.

b. In the R-150, R-90, R-60 and R-40 zones, 800 square feet for each bed.

c. In the R-T, R-30 and R-20 zones, 600 square feet for each bed.

d. In the R-10, R-H, C-O, C-T and C-2 zones, 300 square feet for each bed.

e. In the town sector and planned neighborhood zones, 800 square feet per bed.

Conclusion: This site is classified in the RE-1 Zone and therefore subsection “a.” applies. Petitioner proposes a maximum of 34 beds. At 1,200 square feet per bed, Petitioner must have a minimum lot of 40,800 square feet or 2 acres (87,120 square feet), whichever is greater. The subject property contains approximately 109,335 square feet of land area or 2.5 acres, and therefore exceeds the minimum lot size required.

(3) Minimum side yards are those specified in the zone, but in no case less than 20 feet.

Conclusion: The building is set back approximately 153 feet and 142 feet from the western and eastern property lines. The existing single-family home is setback 18.9 feet from the western side lot line, but is not included in this special exception request because it exists by right. The Hearing Examiner finds that this standard has been met.

(4) Maximum coverage, minimum lot frontage, minimum green area, minimum front and rear yards and maximum height, are as specified in the applicable zone.

Conclusion: According to Technical Staff, the proposed facility will meet all applicable standards for the RE-1 Zone as discussed more fully below. Exhibit 39, p. 10,

(d) Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.

Conclusion: Petitioner proposes 34 beds and 10 staff in the domiciliary care facility and 5 beds and 2 staff in the existing group home. A total of 17 spaces are required for the combined uses, which are provided on-site.

(e) An application must be accompanied by a site plan, drawn to scale, showing the location of the building or buildings, parking areas, landscaping, screening, access roads, height of buildings, topography, and the location of sewers, water lines, and other utility lines. The site plan must also show property lines, streets, and existing buildings within 100 feet of the property, and indicate the proposed

routes of ingress and egress for automobiles and service vehicles. A vicinity map showing major thoroughfares and current zone boundaries within one mile of the proposed home, must be included.

Conclusion: Petitioner has provided a Site Plan meeting these requirements, the final version of which is Exhibit 42(a).

(f) An application for a special exception for this use must include an expansion plan showing the location and form of any expansions expected to be made in the future on the same site.

Conclusion: Not applicable. Petitioner is not proposing any expansions in the future. Exhibit 39, p. 15.

Any future expansions would require a modification of this special exception.

(g) Any nursing home, or domiciliary care home for more than 16 residents lawfully established prior to November 22, 1977, is not a nonconforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section.

Conclusion: Not applicable.

(h) Any application for nursing home and/or care home which is pending at the Board of Appeals as of February 24, 1997 at the request of the applicant, may be processed under the applicable provisions of the Zoning Ordinance in effect at the time the application was filed.

Conclusion: Not applicable.

D. Additional Applicable Standards

Section 59-G-1.23. General development standards.

(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

Conclusion: The following Table from the Staff report (Exhibit 39, p. 10) demonstrates compliance with all applicable development standards.

Minimum lot area	2 acres	109,335 sf. (2.5 acres)
Maximum lot coverage (.59-C-9.46)	15% of lot area	12.8%
Minimum lot width: at street line at building line	25 feet 125 feet	435 ft. (approx.) 435 ft. (approx.)
Minimum setbacks: Front - Needwood Road Front - Muncaster Mill Road Side (corner lot)	50 feet 50 feet 17 (one side)	51.6 ft. (approx.) 142 ft. (approx.) 153 ft. (approx.)
Maximum building height	50 feet	26. 7 ft. (approx.)
Minimum rear setback	35 feet	40.5 ft. (approx..)

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

Conclusion: As discussed above, the applicable parking standards for the number of parking spaces have been met. Requirements for setbacks, shading and landscaping of parking facilities provided for in Article 59-E have also been met, as evidenced by the revised site plan (Exhibit (42(a))).

*(c) Minimum frontage * * **

Conclusion: Not applicable, since none of the listed uses are involved and no waiver is being sought.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: The proposed special exception must comply with the preliminary forest conservation plan which has been approved by the Planning Board. Since this case must go through subdivision, the

Planning Board will review the final forest conservation plan at that time. The following condition has been recommended in Part V of this report:

The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan (Exhibit 23(c)), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: Water Quality Plans are used in special protection areas (SPAs), as specified in Zoning Ordinance §59-A-2.1. Since the subject site is not in an SPA, this provision is inapplicable to this case.

(f) Signs. The display of a sign must comply with Article 59-F.

Conclusion: Petitioner proposes a monument sign at the northwestern corner of the site near the intersection of Needwood and Muncaster Mill Roads. Petitioner testified that a variance for the sign will be required before issuance of a sign permit. The Hearing Examiner recommends the following condition in Part V of this report:

Petitioner must obtain a permit for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform to all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.

(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: As mentioned above, Technical Staff and the Hearing Examiner concluded that the residential character of the subject site will be maintained, given the architectural design of the planned structure, and its setting, setbacks and landscaping. It will thus be compatible with the neighborhood.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: The Petitioner's architect testified that the proposed wall- and pole-mounted light fixtures will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard along the property lines. Having no evidence to the contrary, the Hearing Examiner finds that the proposed lighting meets the above standard.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As discussed above, the planned structure will have a residential appearance and will be appropriately landscaped and screened. Technical Staff advises that vehicular and pedestrian circulation are safe and adequate. The Hearing Examiner finds that this standard has been met.

Based on the record in this case, the Hearing Examiner concludes that Petitioner has satisfied the general and specific requirements for the special exception it seeks. In sum, the domiciliary care home use proposed by Petitioner should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2815, seeking a special exception to permit establishment and use of a domiciliary care home on Parcel 927, Magruder's Hazard Subdivision, 6020 Needwood Road, Derwood, Maryland, be GRANTED, with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and the representations of its counsel identified in this report.
2. The maximum allowable number of residents (beds) must not exceed thirty-nine (39) beds (34 in the new facility and 5 in the existing group home facility);
3. The maximum number of employees on-site at any one time must not exceed twelve (12), including the existing group home;
4. Except in emergencies, deliveries of food and medical supplies are limited to Monday through Friday, 8:30 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 4:00 p.m., and trash pick-up is limited Monday through Friday, 9:00 a.m. to 5:00 p.m. and Saturday, 9:00 a.m. to 4:00 p.m.;
5. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code; if changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must file a copy of the revised site and related plans with the Board of Appeals.
6. All lighting for the site shall comply with the Petitioner's Lighting Plan (Exhibits 4(a) and (b)).
7. Petitioner must obtain a permit for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform to all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.
8. The proposed development must comply with the conditions of the Preliminary Forest Conservation Plan (Exhibit 23(c)), until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.
9. The back-up generator for the proposed facility must contain a critical load silencer and enclosure sufficient to bring noise levels to County Code standards.
10. The Petitioner must possess, not later than the issuance date of the use and occupancy certificate, valid State of Maryland and County licenses, certificates,

- and/or registrations that may be required for a domiciliary care home which provides assisted living to the elderly.
11. Petitioner must maintain 17 parking spaces called for in its Site Plan (Exhibit 42(a)), and may not expand or reduce the parking facility without express permission from the Board through modification of this special exception.
 12. Prior to Preliminary Plan approval, the roadway improvements along Needwood Road including construction of a shared use path must be determined. If the roadway improvements are required on the subject property, the Petitioner must request a modification of this special exception for these improvements.
 13. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: March 15, 2012

Respectfully submitted,

A handwritten signature in dark ink, consisting of a stylized 'L' and 'R' followed by a long horizontal flourish.

Lynn A. Robeson
Hearing Examiner

APPENDIX

Summary of Testimony

1. Dr. Veena Alfred:

Dr. Alfred testified that the eldercare facility will provide support that is not available at nursing homes or people's homes. They provide assistance in daily activities, such as bathing, cooking, and making sure that medications are taken. The facility does not provide Alzheimer's care, but does provide daily support for frail and elderly residents. T. 7. They also provide additional services, such as laundry and housekeeping services, transportation to shopping, and other care. T. 8.

Currently, there is a small group home on the property. It is licensed for five residents and is fully occupied at present. Two non-resident staff members work different shifts. The existing group home will continue to operate if the special exception for the domiciliary care home is approved. T. 8.

The proposed 34-bed domiciliary care facility must be licensed by the State Department of Health and Mental Hygiene. Approximately 10 employees through various shifts will staff the facility, but will not be resident there. Staffing is determined by a staff to patient ratio of approximately one caregiver to four residents. At night, there will be two employees; there will be more during the day. Shifts are generally 7:30 a.m. to 7:30 p.m., barring emergencies. T. 9.

Residents of the facility typically do not have vehicles. Most stay indoors primarily because they generally find the outside too cold, even in the summer. The facility will provide indoor activities like music, art, therapy, movies and exercises. At times they have a family member that will come and take them for the weekend. T. 10.

Dr. Alfred testified that they have received no comments on the application from the community. The property is located across the street diagonally from the Casey House, which is run by Montgomery Hospice. At times, the Casey House have placed there residents in the existing group home or come in to the group home to provide end of life care. T. 10-11. According to Dr.

Alfred, the proposed use differs from a nursing home because the residents do not require nursing care. T. 11.

Dr. Alfred is proposing a sign for the facility at the corner of Muncaster Mill Road and Needwood Road. The sign proposed is larger than permitted by the zoning ordinance, and she plans to pursue a sign variance if the special exception is approved. T. 11.

Dr. Alfred stated that she agrees to abide by all of the conditions of approval suggested by the Planning Board. She also testified that, if required, she would provide a bike path on the property to comply with the Master Plan. T. 12-13.

2. Mr. Patrick La Vay:

Mr. La Vay qualified as an expert in civil engineering. T. 18. He testified that the property is located at the southern intersection of Muncaster Mill Road and Needwood Road and is zoned RE-1, and is approximately 2.5 acres. Residential properties, located adjacent to the south and west of the property, are also zoned RE-1. The property consists of just less than two and one-half acres and is currently improved with the group home, a small driveway area, and some walkways. T. 20-21. The site does not contain any growth meeting the definition of “forest”, and there are no streams, wetlands, flood plans or stream valley buffers on the site. Nor is it located with the Patuxent River primary management area. T. 20-21. The property drains to the Upper Rock Creek watershed, and there are no rare or endangered species on the property. T. 21.

Mr. La Vay described the proposed improvements. The domiciliary care facility will be a 21,576 square foot two-story residential style structure. The parking lot will have 17 spaces, and is located between the proposed care facility and the existing group home. The single proposed access is primarily in the existing location, but will be widened to accommodate the additional vehicle traffic and circulation. T. 21. The care facility will front to the north, or Needwood Road. All traffic will enter from Needwood Road and exit the facility by the same access point. T. 22.

According to Mr. La Vay, the building is setback from Needwood Road by approximately 52 feet. The setback from Muncaster Mill Road, to the east, is 141 feet, both of which exceed the required setbacks of the RE-1 Zone. T. 23. The building setback to the rear is 40 feet and to the side yard is 153 feet.

2. Ms. Victoria Bryant:

Ms. Bryant qualified as an expert in land planning and landscape architecture. T. 13-14. She testified that the sewer category is S-1 and that the use is permitted as a special exception in the RE-1 Zone. T. 16, 36.

According to Ms. Bryant, there are five inherent impacts of a domiciliary care facility. These include building structures and outdoor spaces, lighting, traffic generated by the staff, residents and visitors, parking, deliveries and trash pickup, and noise from deliveries, trash pickup, and the generator. At this location, these impacts are minimal and will not adversely affect the surrounding area. The building is two stories and residential in character similar to those in the neighborhood. Most of the setbacks are in excess of what is required in the zone. It will not be noisy, because most of the residents stay inside and when they do go out, it is not for noisy events. T. 36-27.

The traffic generated will be minimal and adequate parking is provided. Tucking the parking between the two buildings helps reduce its visual impact. The slope from the southern end of the property will also help screen the parking. Deliveries and trash pickups will occur only during the day. T. 37.

Ms. Bryant disagreed with the delineation of the surrounding area recommended by Technical Staff. Staff defined the area as Muncaster Mill to the north, Bowie Mill Road to the east, and Rock Creek Park to the south and west. This does not make sense because the property is actually east of Bowie Mill Road. She defines the surrounding area as Muncaster Mill to the north and east (where it intersects with the ICC) and the ICC to the south and southwest of the property, and then Rock Creek Park to the northwest. T. 38.

According to Ms. Bryant, the proposed application is consistent with the master plan. While the master plan does not contain a site specific discussion regarding the property, one of the goals include providing for elderly and affordable housing. Because of this recommendation, she believes the proposal is consistent with the plan. T. 39-40.

The master plan does contain a recommendation for a class one, dual use bike path located off-site along Needwood Road. A class one bike path is off the roadway and is typically an eight-foot asphalt path shared by hikers and bikers. T. 40. The plan recommends this bike path along Needwood from Redland Road to the southwest to Muncaster Mill Road to the north of the property. Two other master plans affect this bike path: The Inter-County Connector Limited Functional Master Plan and the County Bikeways Functional Master Plan. The County's functional plan recommends an on-road bikeway as well as the dual use off-road hiker/biker path along Needwood Road. T. 38-42. Ms. Bryant testified that the off-road bike path would be located within the right of way on the subject property and be approximately 22-24 feet from the center line of the road. She stated that there is a large swath of grass and trees within the area where the bike path would go. Questions remain about whether the County will expand the roadway to accommodate the on-road bike path. Right now, the master plans do not designate which side of the road the bike path will be on. In addition, the State was originally going to fund bike paths within the ICC as well as the "fingers" from the ICC connecting to the County bike path system. The State now indicates that it will fund only those portions of the bike path within the ICC right of way and will not fund the "fingers" connecting to the local intersections. T. 50-51. At present, Ms. Bryant does not know how the connections will be funded or implemented. T. 51. In addition, there are several large existing trees along the Needwood Road frontage that the Petitioner would like to keep, at least in the short term, because she believes it helps screen the property. According to Ms. Bryant, because the County's goals for the bike path are unclear, the Petitioner would prefer to defer showing a final alignment until the time of preliminary plan. She suggested that the Hearing Examiner place a condition on the

special exception that would (1) permit the Planning Board to determine the final alignment of the bike pathway at preliminary plan and (2) would avoid requiring the Petitioner to return to the Board to modify its special exception plan. T. 45-47.

In Ms. Bryant's opinion, the use will be in harmony with the existing character of the neighborhood because the building proposed is residential in character, scale and mass. At 27-feet in height, it is well under the maximum height permitted in the zone. The setbacks also meet the minimum standards of the RE-1 zone and are similar in character to the surrounding properties. The buildings tend to be a little further from the road and more centered on the property. T. 52. Ms. Bryant stated that the homes to the south are significantly higher than the subject property, so that the proposed structure will have a smaller impact on those homes. Two other properties in the neighborhood, Montgomery Hospice and Magruder High School, are institutional in nature. T. 53.

Ms. Bryant also testified that the use will not adversely impact public facilities. No school-age children are associated with the use, the Gaithersburg Fire Department is 1.8 miles away, and the Sandy Spring Fire Department is 4.9 miles away. A Montgomery County police station is approximately 6 miles from the site, and there are recreational facilities at the high school, Redland Elementary School, and Rock Creek Park. T. 53.

Ms. Bryant explained the amendments to the application made at the request of Technical Staff. She stated that Staff wanted to reduce the amount of impervious area and the number of trees impacted in the original design. Staff recommended moving the proposed building closer to the existing group home to accomplish this. In addition, Ms. Bryant stated that the loading area was originally at the southeast corner of the building, accessed by a loop road that began in front of the building and went around the side to the back. They moved the loading area to its current location to reduce the amount of impervious area on the site. T. 54.

In her opinion, the petition has no non-inherent impacts, is consistent with the master plan because it provides affordable housing for the elderly, and preserves the possibility of locating the

bike path along Needwood Road. T. 56. She believes that the use is in harmony with the neighborhood because it is residential in scale, preserves existing trees, and minimizes the impact of the parking by placing it between the buildings. T. 57. It will not be detrimental to the surrounding community because the buildings are setback far from the road, and are several feet below the adjacent properties to the south, and are screened to the west by an existing row of evergreens as well as the smaller group home. T. 57. Along Needwood Road, the petition, in her opinion, attempts to preserve as many of the existing trees as possible, and there will be a bio-retention facility which will be intensely planted. To the east, along Muncaster Mill Road, they have moved the building back from its original proposed location in order to save more existing trees and the Petitioner will install a line of evergreen and deciduous trees along the southern property line to provide additional buffering there. T. 58.

The Petitioner does propose changing some plantings shown on the current plan. Section 59-E-2.83(d) of the Zoning Ordinance requires that 30% of the paved area be shaded within 15 years. In order to comply with that, they propose replacing several trees, including two Valley Forge elms, two Green Mountain sugar maples, and one scarlet oak, currently shown on the site plan with October glory red maples because they tend to spread out more than the trees originally selected. T. 59.

She does not feel that the use will have objectionable noise impacts. Deliveries and trash pick-ups will be limited to typical daytime work hours. The lighting will be in conformance with County standards, so there will not be any glare. T. 61.

Nor does she believe that the use will change the existing character of the surrounding area. There is an existing special exception for a hospice facility nearby, which is complimentary to the proposed use. There is another special exception for a two-stall barn and storage area on Muncaster Road and a special exception for a natural gas station which will not compound the impact of this special exception on the area. T. 62.

4. Mr. William Stablein:

Mr. Stablein qualified as an expert in architecture. T. 65. He prepared the schematic design plans as well as the lighting plan and photometric study submitted. T. 66. According to Mr. Stablein, the exterior materials will be varied in keeping with the residential character of the neighborhood. There is a water table masonry component to the exterior elevation. This will terminate under the window sills on the first floor. The walls will be faced either with a board-on-board type of siding or stucco material. The sloping roof will have asphalt shingles, and may have some standing seams for accent. The building is two-stories and includes some dormer appendages on the roof to break the scale of the facility. T. 67. The building as designed will be compatible with the surrounding area. T. 68.

Mr. Stablein testified that the lighting will predominantly be building-mounted. There is one pole mounted fixture to illuminate the adjacent parking area. All of the fixtures are cut-off fixtures to minimize dispersion and glare from the lights. The photometric analysis shows that there will be less than the .1 foot candle required, thus there will be no discernable light at the property line. T. 68-69. He has not sized the generator for the facility yet, although it will have to be capable of supporting the life safety systems in the building, as well as refrigerators and freezers and some other items. In his opinion, based on the size of the building, the generator will be small. In addition, a generator enclosure may be ordered with the generator as an accessory. The enclosures are not affixed to the ground and may be removed to service the generator. T. 70. If the Petitioner selects a generator which comes with an enclosure and critical load silencer, combined with the smaller size, the 65-decibel noise limit will be met. T. 69-70. The critical load silencer reduces the sound coming from the exhaust. T. 71.

Mr. Stablein also testified that the sign proposed will require a variance due to its size. T. 74. The sign will be constructed out of the same materials proposed for the building exterior in order to

tie the architecture of the site together. In his opinion, it is not a large sign by signage standards. T. 74.

5. Mr. Carl Starkey:

Mr. Starkey qualified as an expert in transportation engineering. T. 75. According to Mr. Starkey, the proposed use will generate fewer than 30 peak hour trips, so a comprehensive traffic analysis is not required. He used trip generation rates from four different uses to estimate the number of trips that would be generated by this use, including congregate care, assisted living, continuing cognitive care, and assisted living facilities. Three of those categories came from the Institute of Transportation Engineers and one came from trip guidelines put forth by the Maryland-National Capital Park and Planning Commission. Based on this analysis, the proposed facility will generate a maximum of 11 peak hour trips. Because this is under 30 trips, a full Local Transportation Area Review study is not required. Mr. Starkey testified that the property was not subject to Policy Area Mobility Review requirements either due to its location in the Rural East Policy Area. T. 77. There are no mitigation requirements in the area. T. 77.

Mr. Starkey that he based his study on the total number of beds in both the existing group home and the proposed facility. Because the rates are based on the number of beds, the additional staffing for the new facility does not change the number of trips generated. T. 78.

Mr. Starkey also testified that on-site parking is adequate for both uses. There will be a total of 17 spaces to serve both the group home and the domiciliary care facility. The domiciliary care facility requires 14 spaces.

In his opinion, site circulation is safe and adequate. No parking will be permitted on the three areas hatched out on the site plan to assist people circulating through the area. Even if all of the parking spaces were occupied, these areas will allow people to turn around. T. 78-79. The truck delivery is separated from the parking area. T. 79.

While he was not required to perform a traffic count for the proposed use, he did obtain traffic volume data from the Maryland State Highway Administration. He obtained a count conducted in April, 2011, which showed that the nearby intersection of Muncaster Mill Road and Needwood Road currently operates at levels of service D during both the morning and evening peak hours. Even if all eleven trips were added to the peak hour volumes, the intersection would still operate at level of service D. T. 81.

Based on evidence, Mr. Starkey opined that the proposed facility would be in harmony with the general character of the neighborhood, including traffic and parking conditions. T. 81.